IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 889 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

NATUBHAI P KHRISTY (DABHI)

Appearance:

1. Criminal Appeal No. 889 of 1986

MR PRACHHAK APP for Petitioner No. 1

MR KR RAVAL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 27/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The appellant-State of Gujarat has challenged in this appeal the impugned judgment and order of acquittal dated 20.3.1986 passed by the learned Addl. Sessions Judge, Kheda at Nadiad in Sessions Case No.131 of 1986 whereby the learned Judge acquitted the respondent-accused-Natubhai Pitarbhai Khristy (Dabhi) for the offence u/S.302 of the IPC for committing murder of his wife deceased-Shardaben on 25.7.1985.

#. As per the charge Ex.3 of 25.7.1985 at 6.45 a.m. the accused poured kerosene on his wife and lighted match stick and burnt her alive. The prosecution examined as many as 12 witnesses to prove its case against the accused, which include two doctors and one Executive Magistrate and the other witnesses related to the accused and the deceased turned hostile. One independent witness-Bhagvandas Ramjibhai PW-6 Ex.20, who is neighbour of the accused has also turned hostile. Four police witnesses were examined. The prosecution has also tried to rely upon the documentary evidence like inquest panchnama Ex.8, arrest panchnama of the accused Ex.7, F.S.L. report Ex.9, map Ex.11, two dying declarations alleged to have been made by the deceased one before the Executive Magistrate at Ex.26 and another is at Ex.32, panchnama of scene of offence Ex.38 and P.M. notes at Ex.49. Though the incident in question took place on 25.7.1985, deceased-Shardaben died on 30.7.1985 due to septicemia and toxemia because of the burns injuries.

#. It is the prosecution case that the accused husband was staying with his deceased wife-Shardaben, aged 24 years with their son Bharat at Khristi Mohalla of village Boriavi. The accused was serving in Elecon Company, Vidhyanagar. Where parents of the deceased were staying at Bakrol. It is further the case of the prosecution that the accused was in habit of consuming liquor and spending money after it, which was not liked by his wife-deceased-Shardaben. She always used to tell her husband to give up such bad habits of taking liquor. On 24.7.1985 in the evening the accused returned home after consuming liquor, quarrel took place between husband and wife and there was some altercation between them. During that night the deceased mended the floor of her house with cow dung and clay. On the next day i.e. on 25.7.1985 at about 5.00 a.m. deceased woke up in the morning and prepared the meals for her accused-husband, who got up at 6.00 a.m. The accused took bath and got ready to go for service. Before that he was to take

morning tea. At that time, deceased asked the accused to give up his bad habits of consuming liquor. Thereupon the accused got excited and asked the deceased, who was she to tell him about all these things? He told his wife that he was serving and earning, therefore, he would spend money in his own way and she could not tell anything about his habits. By saying that the accused gave 2-3 fist blows to his wife and threatened to kill her with knife. The deceased was having tea at that time the accused took out small tin containing kerosene weighing about one liter and sprinkled it on the legs of the deceased. At that time, she had put on nylon saree. The accused lighted match stick and threw the same on the body of the deceased because of the nylon saree put on by her. She shouted for help. Her neighbour Paniben rescued her. It is further the case of the prosecution that when she caught fire she tried to extinguish it by clothes as a result of which she had also sustained some burns injuries on her wrist of her left hand and also on the upper part of her body. Thus, the accused tried to attempt to murder his wife. She was removed to the hospital where her dying declaration was recorded by the Executive Magistrate. Initially, complaint was registered for the offence u/S.307 of the IPC against the accused. But with the death of deceased-Shardaben on 30th, the accused was charged with offence under Section 302 of the IPC. After completing the investigation, the police filed charge sheet against the accused before the court of Magistrate, who in turn committed the case to the court of Sessions. As stated earlier, the learned Trial Judge, after considering the oral as well as documentary evidence led by the parties came to the conclusion that the prosecution failed to prove its case against the accused beyond reasonable doubt and, therefore, gave benefit of doubt and acquitted the accused for the offence for which he was charged.

#. Learned APP, Mr.Prachhak has taken us through the prosecution evidence as well as documentary evidence and the reasons assigned by the learned Trial Judge acquitting the respondent-accused.

#. Having carefully gone through the entire evidence on record as well as the reasons assigned by the learned Judge for acquitting the respondent-accused, we do not find any substance in this acquittal appeal. The learned Judge has given cogent reasons for acquitting the respondent-accused for the offences for which he was charged. The learned Judge accepted the defence of alibi of accused, which was duly corroborated by the documentary evidence. He was not present at the time of

offence. It is proved that he was at the service place at the time of the incident. The learned Judge also refused to place reliance on so-called dying declarations made by the deceased at Exs.26 and 32.

#. In view of the above discussion, we do not find any merits in this acquittal appeal filed by the State of Gujarat. Accordingly, it fails and the same is dismissed. Bail bonds of the respondent-accused stands cancelled.

(B.J.Shethna, J.)

(J.R.Vora, J.)

*Pvv